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1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

2

STATE OF OKLAHOMA, ex rel.

3 W.A. DREW EDMONDSON, in his capacity as

ATTORNEY GENERAL OF THE STATE OF

4 OKLAHOMA and OKLAHOMA SECRETARY

OF THE ENVIRONMENT C. MILES TOLBERT,

5 in his capacity as the TRUSTEE FOR NATURAL
RESOURCES FOR THE STATE OF OKLAHOMA,

6

Plaintiffs,

7

vs. No. 05-CV-0329 GKF-SAJ

8

TYSON FOODS, INC., TYSON POULTRY, INC.,

9 TYSON CHICKEN, INC., COBB-VANTRESS, INC.,

AVIAGEN, INC., CAL-MAINE FOODS, INC.,

10 CAL-MAINE FARMS, INC., CARGILL, INC.,

CARGILL TURKEY PRODUCTION, LLC,

11 GEORGE'S, INC., GEORGE'S FARMS, INC.,

PETERSON FARMS, INC., SIMMONS FOODS, INC.,

12 and WILLOW BROOK FOODS, INC.,

13 Defendants.

14

15 DEPOSITION OF QUANG PHAM

TAKEN ON BEHALF OF THE DEFENDANTS

16 ON APRIL 30, 2009, BEGINNING AT 9:07 A.M.

IN OKLAHOMA CITY, OKLAHOMA

17

18 APPEARANCES:

19 On behalf of the PLAINTIFF:

J. Trevor Hammons

20 Assistant Attorney General

STATE OF OKLAHOMA

Pham, Quang 4/30/2009

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EXHIBIT

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1 QUANG PHAM,
2 having been first duly sworn, deposes and says in
3 reply to the questions propounded as follows:

4 DIRECT-EXAMINATION

5 BY MS. LONGWELL:

6 Q Please state your full name for the
7 record.

8 A My full name is Quang, Q-u-a-n-g, and
9 last name is Pham, P-h-a-m. Quang Pham.

10 Q Mr. Pham, could you please tell me your
11 current -- who your current employer is?

12 A My current employer is Division of
13 Agricultural Environmental Management Service of
14 the Oklahoma Department of Agriculture, Food, and
15 Forestry.

16 Q How long have you been in that current
17 position?

18 A I have been since September 2002.

19 Q What is your current job in the division
20 of -- and I'm going to abbreviate it -- AEMS of
21 ODAFF.

22 A That's correct, yes.

23 Q What is your position there?

24 A I am an environmental engineer.

25 Q Is that the title you hold at that -- at

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1 required. But the contents are similar. The
2 essential part of either AWMP or CNMP is come up
3 with the application rate of the litter, so to be
4 sure there will be no runoff the field of
5 pollutants of any sort to the waters of the
6 state.

7 Q That's the general purpose of both the
8 AWMP and the CNMP?

9 A That's correct.

10 Q Are there any additional requirements in
11 a CNMP that are not contained in an animal waste
12 management plan?

13 A The -- let me see. In the CNMP there's
14 a part -- there's a -- two parts, I believe, that
15 is not included in AWMP; that is, feeding
16 management and what they call other optional
17 utilization of litter. Those are not covered in
18 the AWMP.

19 Q Let's talk about those two things. When
20 you say "feeding management," tell me what the
21 CNMP requires with regard to feeding management.

22 A The -- at this point in time, the CNMP
23 is very briefly involved with that. In the
24 feeding operation, they have different feeds --
25 like, they may add phytase or some other thing in

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1 So based on that, we'll prepare the
2 draft CNMP. After we prepare the draft CNMP, we
3 send back to the inspector for him to look it
4 over to be sure it's in accordance with what he
5 reports to us through the survey form. And also
6 he has a chance to visit with the grower, to make
7 sure what we put in there is accurate. So that
8 is a preliminary draft.

9 And after they go through that kind of
10 preliminary review, they send it back to us and
11 say it's okay or needs some modification, and we
12 do that.

13 And the next step, we send it to NRCS
14 for their review, for the technical review and
15 approval. And once the technical review and
16 approval is done, we prepare the final version
17 and send out so the grower and the district
18 conservationist of the area.

19 Q So once you receive the initial
20 information or the initial feedback from the
21 poultry inspector in the field, how do you
22 determine what the CNMP is going to contain for
23 that field or for that grower?

24 A I think about three or four parts
25 essential of a CNMP is, number one, to determine

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1 the rate of application, and want to be sure they
2 have adequate storage. And also they have the
3 conservation practices or sometimes they're
4 called best management practices to prevent any
5 runoff of the pollutant to the stream.

6 So we look over all of that based on the
7 map and the information, and we come up with the
8 application rate.

9 Q Tell me what -- what information do you
10 use as a -- what technical information do you use
11 as a guide to determine the rate of application?

12 A We go by the Code 590 of the NRCS.

13 Q Do you know if that's different -- is
14 the rate of application determined differently
15 under the animal waste management plan than under
16 the CNMPs?

17 A No. They're the same. Same way. We go
18 by the same Code 590.

19 Q And the best management practices, what
20 technical material do you look at to determine
21 whether or not the poultry operation has
22 implemented appropriate best management plans?

23 A The conservation practice or best
24 management practices we focus in the water body
25 in the area, specifically, like, a well, the

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1 pond, or any stream nearby. And we put in the
2 buffer or the setback 100 feet or 50 feet from
3 those water course or water body.

4 Q So if upon inspection a poultry
5 inspector doesn't see that there are these
6 appropriate setbacks or buffers between the water
7 bodies associated with that piece of land and the
8 litter application site, do you then in the CNMP
9 require that operator to put those in place in
10 order to land apply poultry litter under the
11 plan?

12 A The CNMP is a document that we say that
13 you need to stay away 100 feet from a pond, for
14 example. That's a buffer or the setback. And we
15 send out there to the PFO. And then, you know,
16 whether the PFO actually do it on every day any
17 time they land apply, we don't know. Because the
18 poultry inspector just goes out there and makes
19 inspection once a year.

20 So the document is there. But whether
21 they properly implement it, I don't know.

22 Q Okay. I guess maybe my question kind of
23 got lost. And I'm not sure, but maybe I wasn't
24 articulate enough in asking it.

25 And that is, does the CNMP ever require

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1 talked about with regards to the pollution
2 prevention plan and -- are there any other
3 differences between it and an animal waste
4 management plan for a registered poultry feeding
5 operation?

6 A I have to make a differentiation here.
7 In the poultry feeding operation Act or poultry
8 feeding operation rules, I don't see any place in
9 there talking about pollution prevention plan.

10 Pollution prevention plan normally
11 talking cattle CAFO, dairy CAFO, and swine
12 facilities. So as far as I remember that, either
13 AWMP or CNMP were mentioned in the poultry
14 feeding operations rules and Act, but not
15 pollution prevention plan.

16 Q Okay. Let's talk about the purpose -- I
17 think we kind of talked about the purpose of an
18 animal waste management plan across the board.

19 How -- what would you say the purpose of
20 the plan is?

21 A The AWMP or CNMP?

22 Q Well, haven't we agreed that they're
23 pretty much the same thing?

24 A Yes.

25 Q So what is the purpose of the plan?

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1 A The purpose of the plan is the guidance
2 to the poultry feeding operations or CAFO to
3 follow, to prevent any runoff or pollutants off
4 of the application site.

5 Q Is the expectation that if a poultry
6 operator follows that -- either the CNMP or the
7 animal waste management plan -- that there will
8 be no runoff of phosphorus from the fields where
9 litter is applied?

10 MR. HAMMONS: Object to the form.

11 THE WITNESS: If they comply with the
12 requirement as stated, I don't think that there's
13 any other pollutant would leave the site --
14 runoff pollutant leaving the site.

15 The fact is we're required to have the
16 setback and the buffer area, and those setback
17 and buffer area would absorb of any extra runoff
18 from the application site.

19 So if they comply with application rate
20 and they adhere to the buffer zone and the
21 setbacks, there will be no pollution caused by
22 the PFO to the water course. And say that they
23 have to comply with one of those things.

24 Q (BY MS. LONGWELL) And those are -- the
25 litter application rate is sort of a fluctuating

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1 particular field?

2 MR. HAMMONS: Object to the form.

3 THE WITNESS: We have the Code 590.

4 They have two tables, Table 8 and Table 9. Table

5 8 is apply for the area that we call non-nutrient

6 limited watershed or non-vulnerable groundwater.

7 The application rate is littler than

8 those located in the nutrient limited watershed.

9 I don't remember well, but the threshold of 200

10 STP -- it may go to, like, 300 for the one

11 located in non-nutrient limited watershed. But

12 the nutrient limited watershed, it could be 250

13 or 300. I don't remember well.

14 But after that, when it goes to -- for

15 example, in non-nutrient limited watershed, if it

16 exceeds, like, 300 or 250, then the application

17 rate will be going reduced to half of the rate

18 rather than a full application rate.

19 Q (BY MS. LONGWELL) And that guidance is

20 provided within the animal waste management plan

21 or the CNMP; correct?

22 A Yes.

23 Q To the poultry operator?

24 A Actually, we go a little bit more in

25 detail. We look at the Table 8 and 9 and we look

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1 at the STP of the soil that they're going to land
2 apply and we come up with a rate for them. And
3 we say Field 1, you can apply four tons of litter
4 per acre per year; then Field 2, you go to, like,
5 three tons or something.

6 We come up with fairly specific
7 application rate for them, rather than they have
8 to refer to the Code 590 to figure it out
9 themselves. So we actually give them the number.

10 Q Do you know whether or not ODAFF has any
11 similar type of guidance for farmers who are
12 utilizing commercial fertilizer versus poultry
13 litter?

14 MR. HAMMONS: Object to the form.

15 THE WITNESS: I don't know.

16 Q (BY MS. LONGWELL) Okay. Are you
17 involved in any aspect of ODAFF's regulation of
18 commercial fertilizer?

19 A No.

20 Q Have you ever been involved in creating
21 a nutrient management plan for an individual or
22 an entity that's applying commercial fertilizer?

23 A No.

24 Q Have you ever been involved in actually
25 enforcing the Registered Poultry Feeding Act?